

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

SELECT ENERGY SERVICES, LLC,

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Plaintiff,

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vs.

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No. 4:12-cv-000149-SWW

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MICHAEL LEBEL,

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Defendant.

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ORDER

The Court informs the parties that defendant Michael Lebel's motion to strike and dismiss Select Energy Services, LLC's complaint or alternatively for summary judgment [doc.#5] will be considered solely as a motion for summary judgment as both parties rely on affidavits with respect to this motion and the Court anticipates that witnesses will be called at the hearing on this motion and Select Energy Services's motion [doc.#3] for temporary restraining order and preliminary injunction (which will be considered solely as a motion for preliminary injunction). See *Riehm v. Engelking*, 538 F.3d 952, 961-62 and n.5 (8th Cir. 2008) (noting that if matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Fed.R.Civ.P. 56 and the parties must be given a reasonable opportunity to present all the material that is pertinent to the motion).

IT IS SO ORDERED this 23rd day of March 2012

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE